

provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) days from the communication.

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities.

(h) No sale is made until seven (7) days after delivery to the purchaser of a prospectus. [Alternative: No sale is made until seven (7) days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus.]¹

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

2. Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

4. Is subject to any federal or state administrative enforcement order or judgement which prohibits, denies, or revokes the use of any exemption from registration connection with the offer, purchase or sale of securities.

5. Is currently subject of any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

The prohibitions listed above shall not apply if the person subject to the

disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of section [301] of this Act for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1).

Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the [Administrator] under section [408] of the Act and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section [301] of this Act, but shall be a violation of the Act, be actionable by the [Administrator] under section [408] of the Act, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products and the following legends:

1. No money or other consideration is being solicited and none will be accepted;

2. No sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

3. An indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

4. This offer is being made pursuant to an exemption from registration under the federal and state securities laws. No sale may be made until the offering statement is qualified by the SEC and is registered in this state.

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule.

[(c) A preliminary prospectus (or its equivalent) may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.]²

(4) The [Administrator] may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the [Administrator] with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the [Administrator] of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of Section 301 of the Act by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on section[s] [private placement exemption]³ until [six (6)]⁴ months after the last communication with a prospective investor made pursuant to this rule.

Comments

1. All communications made in reliance on this rule are subject to the anti-fraud provisions of this Act.

2. The [Administrator] may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

3. Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section [410] of the Act. Likewise any misrepresentation or omission may give rise to civil liability. Under the Uniform Securities Act a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure." See commentary under Section 410.

Note to Users: The following form sets forth the minimum informational requirement for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must thereby be complete. Also, any discussion of potential rewards of the proposed investment must be balanced by a

² See footnote 1.

³ Each jurisdiction should review its exemptions to determine which ones should be denied if contaminated by public solicitation.

⁴ Some jurisdictions may choose a twelve month period because the private placement exemptions already in their statutes use this time frame.

¹ The bracketed subsection should only be used in those jurisdictions that have or intend to adopt an applicable "red herring" exemption. The "red herring" exemption should cross-reference this rule to avoid confusion.